

Sam Hafif

Page 1

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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Civil Action No. 07 CV 7998 (HB)

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CERVECERIA MODELO, S.A. DE C.V. and

MARCAS MODELO, S.A. DE C.V.,

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Plaintiffs,

6

vs.

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8 USPA ACCESSORIES LLC d/b/a CONCEPT ONE

ACCESSORIES,

9

**ORIGINAL**

Defendants.

10 -----)

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14

DEPOSITION OF SAM HAFIF

15

New York, New York

16

Friday, April 25, 2008

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23 Reported by:

24 Toni Allegrucci

25 JOB NO. 202554

Sam Hafif

Page 124

1 S. HAFIF

2 A. Yes.

3 Q. And then there's something  
4 handwritten which I believe is flip-flops?

5 A. Yes.

6 Q. Is there anything after that?

7 A. T-shirts.

8 Q. So can you read that?

9 A. T-shirts.

10 Q. Oh, T-shirts, okay. All right.  
11 Then you are saying that bags  
12 should be on here?

13 A. Yes.

14 Q. Is there anything else besides bags  
15 that should be on here?

16 A. I don't believe so, no.

17 Q. And why do you say that bags should  
18 be on Exhibit B of this license agreement?

19 A. Because, because the original  
20 agreement we made with them included bags and  
21 they left it off the contract, and then we  
22 were told thereafter that they were adding it  
23 back to the contract and, in fact, we were  
24 told on several occasions that we were, the  
25 market was also told that we were the bag



Sam Hafif

Page 125

1 S. HAFIF

2 licensee.

3 Q. When you say "the market was told,"  
4 are you saying by Marcas Modelo?

5 A. Yes.

6 Q. Do you know -- well, first of all,  
7 let's go back to the "we were told part."

8 Who told you that bags would be  
9 added?

10 A. Jean Marie Ruffini.

11 Q. And did she do that verbally or in  
12 writing?

13 A. By e-mail.

14 Q. And did she affirmatively state  
15 we're going to put it back in?

16 A. Actually both verbally and by  
17 e-mail.

18 Q. Okay. And do you recall what she  
19 said in the e-mail?

20 A. She said she would have it added to  
21 the contract.

22 Q. But affirmatively that she was  
23 going to add it to the contract?

24 MR. TOKAYER: Objection as to form.

25 A. I don't remember the exact language

Sam Hafif

Page 126

1 S. HAFIF

2 she used, but the indication was that it was  
3 going to be added back to the contract and  
4 that we should continue to develop and sell  
5 the product.

6 Q. Did she say anything else other  
7 than that?

8 A. No. Well, I don't recall the  
9 specifics, you know, the details of the  
10 conversation. It was back in January of last  
11 year.

12 Q. Do you recall whether anyone other  
13 than Jean Marie Ruffini stated that bags  
14 would be added to the contract?

15 A. I don't recall.

16 Q. Now, let's go to the other part,  
17 the trade was told, is that what you said?

18 A. Yes. I believe he said the  
19 "market."

20 Q. The "market," okay.

21 Who did tell the market that  
22 Concept One was licensed to sell bags under  
23 the Corona trademark?

24 A. A list of licensees was sent out to  
25 the other licensees, as well to certain



Sam Hafif

Page 127

1 S. HAFIF  
2 retailers listing all of the approved  
3 licensees for 2007 and listing the product  
4 classifications that they were licensed for,  
5 and under Concept One it listed specifically  
6 bags, it was circulated throughout the  
7 market.

8 Q. So you are saying this was a  
9 memorandum or some type of document that was  
10 actually prepared by Marcas Modelo?

11 A. Yes, it was a licensee list. It  
12 was an approved licensee list for 2007  
13 listing the companies and the product class,  
14 contacts and the product classifications that  
15 they were licensed for.

16 Q. Do you recall the purpose, the  
17 purpose of the document?

18 A. Yes. It was in order to inform the  
19 marketplace of who, because they had culled  
20 back their license, they had cut back their  
21 approved licenses. And so there was a lot of  
22 question in the marketplace in terms of who  
23 was authorized and who was not authorized.  
24 So they created, I believe they created this  
25 document in order to clarify for the

Sam Hafif

Page 128

1 S. HAFIF

2 retailers who would be licensed in what  
3 product categories, and they gave it to us in  
4 order to circulate to our customers, we did.

5 Q. Okay. Do you recall who actually  
6 sent out the document?

7 A. I got a copy from Juan Fernandez  
8 and I believe a copy was sent by Jean Marie  
9 to Tara in my licensing department.

10 Q. Does Concept One have a category of  
11 products that it refers to as "juniors"?

12 A. No, juniors means women's, it's not  
13 a category. Girls is children's, juniors is  
14 women's.

15 Q. Okay. Is that an industry term or  
16 in your company?

17 A. It's an industry term.

18 Q. All right. So juniors, it refers  
19 to young women?

20 A. Yeah. For example, Mandy shops is  
21 a juniors chain. Limited Too is a children's  
22 chain or Kids 'R Us is a children's chain.  
23 Children's Place, children's chain. What's  
24 another juniors, Forever 21 is a juniors  
25 chain. Are you familiar with Forever 21?



**Sam Hafif**

Page 129

1 S. HAFIF

2 Q. Okay.

3 A. In the mass merchants and in the  
4 department stores they have separate buyers  
5 for children's products and for adult  
6 products, the adult buyers buy the juniors  
7 products, juniors is adult.

8 Q. Okay. That's helpful, okay.

9 Going back to the list that you  
10 received from Juan Fernandez of the licensees  
11 of Marcas Modelo and the products, did you do  
12 anything with that list?

13 A. What do you mean did we do  
14 anything?

15 Q. Did you give it to anyone, show it  
16 to anyone?

17 A. I'm sure, we used it for selling  
18 purposes. At the time there was a lot of  
19 confusion in the marketplace as to who was an  
20 authorized licensee and for what categories.  
21 So in order for us to obtain sales we used  
22 whatever, everything that they gave us as a  
23 selling tool, so I'm sure that was used.

24 Q. Okay so when you say "used as a  
25 selling tool," you mean showing it to your

Sam Hafif

Page 130

1 S. HAFIF

2 customers?

3 A. Yes.

4 MR. SAUNDERS: Please mark the next  
5 exhibit.

6 (Hafif Exhibit 5, document, marked  
7 for identification, as of this date.)

8 Q. Is that Exhibit 6 I just handed you  
9 -- oh, 5?

10 A. Five.

11 Q. Do you recognize Exhibit 5?

12 A. Yes.

13 Q. It's a string of e-mails, correct?

14 A. Yes.

15 Q. And if you look on the second  
16 page of the exhibit, in the lower e-mail,  
17 that's an e-mail from Jean Marie Ruffini to  
18 you, correct?

19 A. Yes.

20 Q. Dated Wednesday, November 1st?

21 A. Yes.

22 Q. Is this one of the e-mails that you  
23 were referring to just a little while ago  
24 regarding adding bags to Exhibit B of the  
25 Marcas Modelo license agreement?



Sam Hafif

Page 131

1 S. HAFIF

2 MR. TOKAYER: Objection.

3 A. Yes.

4 Q. Okay. It says "hi Sam, I think we  
5 can add these in Exhibit B and e-mail to  
6 you;" is that correct?

7 A. Yes.

8 Q. On the top of that page there is an  
9 e-mail from you to Jean Marie and  
10 Juan Fernandez, correct?

11 A. Yes.

12 Q. And that looks like it's from  
13 March 14, 2007?

14 A. Yes.

15 Q. All right. And then you say "Dana  
16 told me that some bags are being rejected as  
17 'not in contract.' Please see below where  
18 you said you would add bags back in."

19 Did I read that, right?

20 A. Yes.

21 Q. So are you saying that, in this  
22 e-mail are you saying that you understood  
23 Jean Marie Ruffini's e-mail of November 1st  
24 as definitively stating to you that bags  
25 would be added back in to Exhibit B?

Sam Hafif

Page 132

1 S. HAFIF

2 A. No.

3 Q. So what are you saying?

4 A. So what I'm saying is, I was  
5 referring to this e-mail below in my  
6 correspondence to them, telling them that  
7 this, telling us that they were going to add  
8 bags back in, but that's not the assumption  
9 that we worked, the assumption wasn't based  
10 on this e-mail, it was based on the ongoing  
11 business and bags that we were doing for the  
12 entire timeframe from November 1st until that  
13 date and not once were we told bags were not  
14 being put back in until this letter rejecting  
15 everything, okay. So it wasn't based on the  
16 e-mail, it was based on the e-mail, plus the  
17 fact that we were continuing, producing a  
18 category that was in the prior contract, that  
19 we were told was being put back in. That was  
20 on -- that we were clearly authorized for in  
21 their distribution list that they sent around  
22 to everybody, okay. That was the assumption,  
23 not based on this e-mail.

24 Q. Okay. All right. But if we just  
25 focus on the e-mail for a second, would you



Sam Hafif

Page 133

1 S. HAFIF

2 agree that it does not definitively state  
3 that bags would be added to Exhibit B?

4 MR. TOKAYER: Objection.

5 A. Okay.

6 Q. I'm just focusing on the e-mail?

7 A. It says I think we can add in  
8 Exhibit B an e-mail to you, it doesn't say  
9 they did it, it says they were going to do  
10 it.

11 Q. Okay. And do you know whether you  
12 had discussions with Jean Marie after this  
13 e-mail, after November 1, 2006?

14 A. Specifically regarding bags -- I  
15 had a lot of discussions with Jean Marie.

16 Q. I know. Specifically regarding  
17 adding bags to Exhibit B?

18 A. No, not until we started getting  
19 rejections.

20 Q. And did you have discussions with  
21 anyone other than Jean Marie?

22 A. Regarding bags?

23 Q. Yes.

24 A. Yes.

25 Q. Who?

1 A. ~~Juan Fernandez~~ **S. HARIF**

2 Q. Do you recall when?

3 A. I believe it was in February we  
4 made a trip down to San Antonio to meet with  
5 Juan, and we presented products at that  
6 meeting and some of the products that were  
7 presented were bags, so he was aware that we  
8 were producing bags.

9 Q. February 2007?

10 A. Yes. I don't know the exact date.

11 Q. Did you have any discussions with  
12 anyone other than Jean Marie and Juan about  
13 adding bags to Exhibit B?

14 A. We didn't have any contact with  
15 anybody else at the company besides  
16 Jean Marie and Juan.

17 Q. Ever?

18 A. Nope, never. Tried, sent letters,  
19 never got responses.

20 Q. No, but I'm saying in your  
21 day-to-day business, before this dispute, did  
22 you have any contacts just in your ordinary  
23 course of business with anyone other than  
24 Jean Marie and Juan Fernandez?